



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 04489-00
4 August 2000

SGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested removal of three fitness reports, for 1 February to 28 April 1996, 28 April to 29 July 1996, and 30 July to 6 August 1996. Additionally, you requested removal of a service record page 11 ("Administrative Remarks") counseling entry dated 23 April 1996, and all reference to a nonjudicial punishment (NJP) of 6 August 1996.

It is noted that the Commandant of the Marine Corps (CMC) has removed the fitness reports for 1 February to 28 April 1996 and 30 July to 6 August 1996. Your requests for removal of the page 11 entry and the NJP were not considered, since the page 11 on which the contested entry appeared has been altered by removal of that entry, and the only reference to the NJP was in the removed fitness report for 30 July to 6 August 1996.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 23 June 2000, a copy of which is attached, and your letter dated 10 July 2000 with enclosure.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice warranting removal of the remaining contested report for 28 April to 29 July 1996. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. In view of the above, your application for relief beyond that effected by

CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

044887-00

IN REPLY REFER TO:
1610
MMER/PERB
23 JUN 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] D Form 149 of 20 Mar 00
(b) MCO P1610.7D
(c) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 21 June 2000 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 960201 to 960428 (CD) -- Reference (b) applies
- b. Report B - 960428 to 960729 (CH) -- Reference (c) applies
- c. Report C - 960730 to 960806 (GC) -- Reference (c) applies

2. The petitioner contends that including information in Report A concerning DUI charges was premature since the matter was pending. Moreover, DUI charges were ultimately dismissed on July 3, 1996 by the U.S. District Court for the Eastern District of Virginia. Concerning Report B, the petitioner challenges the validity of the evaluation based on "unacceptable comments" relating to a lack of experience in his new assignment. He also believes the Reporting Senior felt compelled to downgrade marks in nearly every observed marking. Finally, the petitioner challenges Report C based on it's adversity and the fact that he was not given an opportunity to sign Item 24 nor to provide a rebuttal statement.

3. In its proceedings, the PERB concluded that:

a. The removal of Reports A and C is warranted and has been directed.

b. Report B is both administratively correct and procedurally complete as written and filed. Although inexperience in a new job is to be expected, the Reporting Senior nevertheless reported the observed performance in a positive manner and did

(3) PERB

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not emphasize any particular deficiency. The petitioner's displeasure and disagreement with the evaluation aside, there is no documentation furnished with reference (a) to show that the Reporting Senior was somehow unfair in rendering the evaluation or that he rated more than what has been recorded. To this end, the Board finds that the petitioner has failed to meet the burden of proof necessary to establish the existence of either an error or an injustice.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report B should remain a part of Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps